

REMARKS

Applicants acknowledge receipt of the Final Office Action dated March 6, 2008. In this response, Applicants have cancelled claim 2 without prejudice or disclaimer. In addition, Applicants have amended claims 1, 10, and 14-17 and have added claims 21-27. Following entry of these amendments, claims 1 and 3-27 are pending in the application.

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Statement of Substance of Interview

During a personal interview conducted on June 24, 2008, Examiner Hernandez and Mr. Paul Strain discussed the rejections set forth in the outstanding Office Action. The Examiner's Interview Summary accurately reflects the substance of the discussion.

Rejection Under 35 U.S.C. § 112, 2nd Paragraph

On page 2 of the Office Action, the PTO has rejected claims 1 -14, 19 and 20 under 35 U.S.C. § 112, 2nd paragraph as allegedly being indefinite. In this response, Applicants have amended claim 1 to delete the term "and/or" thereby rendering the outstanding rejection under § 112, 2nd paragraph moot.

Rejection Under 35 U.S.C. § 103

On page 2 of the Office Action, the PTO has rejected claims 1-9 and 12-20 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent 6,921,127 to Feith *et al.* (hereafter "Feith") in view of U.S. Patent 6,739,673 to Gupta *et al.* (hereafter "Gupta"). Applicant traverse this rejection for the reasons set forth below.

Also, on page 4 of the Office Action, the PTO has rejected claims 10-11 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent 6,921,127 to Feith *et al.* (hereafter "Feith") with Gupta *et al.* (hereafter "Gupta") as applied to claim 1 above, and further in view of U.S. Patent 6,305,733 to Rahmstorf *et al.* (hereafter "Rahmstorf"). Applicant traverse this rejection for the reasons set forth below.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, prior art references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

The Supreme Court in *KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727 (2007) has not removed the requirement that the prior art reference (or references when combined) must teach or suggest all the claim limitations. Indeed, *KSR* emphasized cases where all features are known.¹ Furthermore, the exemplary rationales listed in MPEP 2143 suggests that all elements (when the references are combined) need to be known in the art to support a conclusion of obviousness.²

Here, Feith, Gupta and Rahmstorf, whether taken individually or in combination, fail to teach or suggest "a plurality of holes which are spaced apart from one another, which are

¹ The Supreme court noted three cases *United States v. Adams*, 383 U.S. 39 (1966), *Anderson's-Black Rock, Inc. v. Pavement Salvage Co.*, 396 U.S. 57 (1969), and *Sakraida v. AG Pro, Inc.*, 425 U.S. 273 (1976) which all dealt with the issue of whether known elements combined together would be obvious. These statements reinforce the concept that the elements of the claim have to be known in the art before they are determined to be combinable or not.

² For example, if a finding that all claim elements were known in the prior art cannot be made, then the rationale of combining prior art elements according to known methods cannot be used. If a finding that the substitution of one known element for another known element (which suggests a teaching of the known elements in the prior art) cannot be made, then the rationale of simple substitution of one known element for another cannot be used. If a finding that a method of enhancing a particular class of devices, methods or products based upon the teaching of such an improvement in other situations cannot be made, then the rationale of the use of known techniques to improve similar devices in the same way cannot be used. If a finding that a particular known technique was recognized in the art (which suggests a teaching of the technique in the prior art) cannot be made, then the rationale of applying a known technique to a known device, method, or product ready for improvement cannot be used. If a finding that there are known options with the grasp of a person of ordinary skill (which suggests a teaching of the known options in the prior art) cannot be made, then the rationale of obvious to try cannot be used. If a finding that design incentives or other market forces could have prompted one of ordinary skill to vary the prior art in a predictable manner (which suggests a teaching of the predictable manner in the prior art) cannot be made, then the rationale of the known work in one field of endeavor may prompt variations of it for use in either the same field or a different one cannot be used. If a finding that a person of ordinary skill in the art would have been motivated to combine the prior art to achieve the claimed invention (which suggests that the prior art when combined teaches all the elements of the claimed invention) cannot be made, then the rationale of some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify or combine prior art reference teachings cannot be used.

arranged in *rows* and *columns*, which form a pattern, and which permit a medium to enter or exit the duct” (emphasis added) as recited in independent claims 1, 15, 16, and 17.

In addition, Applicants note that Feith, Gupta, and Rahmstorf, whether taken individually or in combination, fail to teach or suggest that “the plurality of holes are arranged in an opening region of the base body and, within the opening region, are arranged around at least about half of a circumference of the duct” as also recited in independent claims 1, 15, 16, and 17.

For at least these reasons, Applicants submit that the outstanding rejection based upon the combination of Feith, Gupta, and Rahmstorf does not properly apply to amended claims 1, 15, 16, and 17 and ought to be withdrawn.

With particular regard to Gupta and as discussed during the personal interview referenced above, Applicants wish to point out that Gupta does not disclose a plurality of rows and columns and that reference numeral 188 refers to molded attachment parts rather than openings. Specifically, at col. 19, ll. 59-63, Gupta states that: “[t]he panels preferably are configured with suitable openings 186 or molded attachment structures 188 adapted for receiving one or more instruments, gauges, or other components, or communicating air to a vent opening into the passenger compartment.” (Emphasis added).

If an independent claim is nonobvious under § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988). See MPEP 2143.03. Thus, Applicants submit the present dependent claims, each of which ultimately depends from independent claim 1 or independent claim 17, are also non-obvious at least by virtue of their dependency an allowable dependent claim and also for their additional recitations.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections under § 103.

Newly Added Claims

In this response, Applicants have added claims 21-27.

With particular regard to claim 21, Applicants note that none of the references cited in the outstanding § 103 rejections teach or suggest a structural element according to claim 1,

“wherein the rows and columns are arranged such that at least two adjacent rows are offset relative to one another.”

With particular regard to new independent claim 22, Applicants note that none of the references cited in the outstanding § 103 rejections teach or suggest a structural element “wherein the base body is formed from two half bodies or from two half shells, wherein each half body or half shell comprises edges which bear against each other, wherein the holes are arranged in an opening region on at least one half body or half shell, and wherein the opening region is located in a central portion of the duct relative to the edges of the half body or half shell.”

CONCLUSION


Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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